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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 MICHELLE FOTINOS, individually and as
13 guardian ad litem on behalf of R.F., a minor
14 child,

15 Plaintiff,

16 v.

17 LAURIE SILLS, in her individual and official
18 capacities, DAVID BOYES, and DOES 1
19 through 10, inclusive,

20 Defendants.

Case No. CV-12-03828 MEJ

21 **STIPULATION AND [PROPOSED]**
22 **ORDER TO VACATE DEFAULT OF**
23 **DEFENDANT DAVID BOYES**

24 Judge: Hon. Marie-Elena James
25 Chief Magistrate Judge

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STIPULATION

Plaintiff MICHELLE FOTINOS, individually and as guardian ad litem on behalf of R.F., a minor child and Defendant David Boyes, by and through their respective counsel, hereby enter into this stipulation to vacate any default entered into against Defendant BOYES and allow Defendant to file a responsive pleading to Plaintiffs' Complaint.

WHEREAS, on or about July 23, 2012, Plaintiff filed her Complaint and Demand for Jury Trial in this matter;

WHEREAS, on the afternoon of October 12, 2012, Stephen Sherman, counsel for Defendant, left a detailed telephone message for Patricia Barry, counsel for Plaintiff, indicating that Defendant had recently retained his firm as counsel, inquiring about the status of service, and requesting a brief continuance in order to file a timely responsive pleading to Plaintiff's Complaint;

WHEREAS, Plaintiffs' counsel did not receive the telephone message from Defendant's counsel until October 13, 2012;

WHEREAS, on the evening of October 12, 2012, following the telephone message from Defendant's counsel, Plaintiff's counsel prepared and submitted to this Court documents in support of an entry of default against Defendant;

WHEREAS, on November 1, 2012, this Court is scheduled to hear a Motion to Dismiss Plaintiff's Complaint by Defendant LAURIE SILLS and Plaintiff's opposition has included a request for leave to amend her Complaint;

WHEREAS, the interests of justice and judicial economy would be served to allow Defendant BOYES to file a responsive pleading to Plaintiff's Complaint and such a response should await this Court's determination of the pending Motion to Dismiss;

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1 THE PARTIES HEREBY STIPULATE to the following:


2 1. The Entry of Default Against Defendant David Boyes be vacated by this Court.

3 2. Defendant David Boyes be allowed to file a responsive pleading to Plaintiff's
4 original Complaint within seven (7) days of this Court's decision to deny the pending Motion to
5 Dismiss.

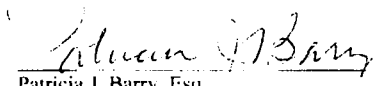
6 3. Defendant David Boyes be allowed file a timely responsive pleading to Plaintiff's
7 First Amended Complaint in the event this Court grants the pending Motion to Dismiss with
8 leave to amend.

9 Dated: October 4, 2012

HALVERSON & ASSOCIATES

11 
12 Stephen J. Sherman, Esq.
13 Attorneys for Defendant
DAVID BOYES

14 Dated: October 4, 2012

15 
16 Patricia J. Barry, Esq.
17 Attorneys for Plaintiff
18 MICHELLE FOTINOS


19 **ORDER**

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21 Having considered the above stipulation of the parties and good cause appearing,

22 IT IS SO ORDERED.

23 November 9, 2012

24 Dated: October __, 2012

25 
26 Hon. Marie-Elena James
27 Chief Magistrate Judge
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